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Supreme Court, U.S.
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Case No. 00-391

In The
Supreme Court Of The United States

STATE OF FLORIDA,

Petitioner,

v.

ROBERT A. THOMAS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONER'S REPLY BRIEF ON THE MERITS

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REPLY BRIEF OF THE PETITIONER

In Thomas v. State, 761 So. 2d 1010 (Fla. 1999), the Florida Supreme Court opined that the holding of this Court in New York v. Belton, 453 U.S. 454 (1981), should be conditioned on the arrestee being physically situated in a vehicle when contact between the police and the arrestee is initiated by the police. The addition of that condition to a valid search incident to an arrest of a recent occupant[1] of a vehicle is contraindicated by Belton and by the line of cases, both federal and state, which sanction a Belton search under the factual circumstances similar to those presented *sub judice*. Thus, petitioner submits that Belton applies regardless of the **reason** that the arrestee exits his vehicle and regardless of whether the police initiate contact with the arrestee before he exits the vehicle. The contrary view would require an officer to divine the arrestee's subjective perceptions as to what provoked his exit from the vehicle. The resultant blurring of the Belton bright-line rule would not foster the desired easily-discernible standard of police conduct to guide actions in the field.

It is eminently reasonable for a police officer to conduct a contemporaneous search of a recent occupant's vehicle where that person has been **arrested**. The facts herein concern an arrest scenario, and Respondent acknowledges that an officer is placed in danger at the moment he initiates contact with a

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[1] In their briefs, respondent and *amicus* in support of respondent [hereinafter NACDL] focus much attention on petitioner's use of the term "recent occupant" and attempt to stretch that term to its limits. They fail to acknowledge, however, that respondent Thomas in the instant case was a "recent" occupant in that he had just exited his vehicle when approached by Detective Maney and, therefore, could not be characterized as an "occupant." The attention devoted to the term "recent occupant" by respondent and the NACDL demonstrates concern for something more akin to the contemporaneous requirement of a valid search incident to an arrest rather than to the question presented at bar, i.e., whether the Florida Supreme Court improperly determined that the Fourth Amendment requires a Belton search be conditioned on the police initiating contact with the arrestee while the arrestee is still in his vehicle.

subject (Brief of Respondent at p. 31). Since that contact can occur, as in the instant case, after a subject has already exited the vehicle without yet perceiving the police presence, concern for officer safety is not diminished merely because contact is established subsequent to the subject's voluntary exit from a vehicle. The officer's concerns for safety exist regardless of the reason the arrestee exited a vehicle.

Recognition of the volatility of the arrest scenario likely explains the nearly universal acceptance of the validity of a Belton search where the arrestee has already been removed from the immediate vicinity. Indeed, as recognized by NACDL in its brief at pp. 9-10, Belton searches can, and by practical necessity invariably do, take place after the suspect is outside of the car. NACDL further acknowledges that Belton itself holds that "it is true that 'an individual need not be inside the vehicle at the time of the arrest for Belton to authorize a search of the car incident to the arrest.'" Brief of NACDL at p. 17, citing U.S. Brief at p. 12. These recognitions serve to dispel reliance upon the Chimel[2] line of cases which require confinement of a search of a vehicle incident to arrest to the area within the arrestee's ability to lunge and grab. Because it is a given that Belton applies once the arrestee is out of the vehicle (and, indeed, where the arrestee is most often restrained), the question remains as to why it should make any difference whether the police initiate contact with the arrestee while he is still in his vehicle. The answer of course is that it does not make a difference *because it is the act of arrest, and not where the arrestee is situated*, which justifies the search.

Further, Respondent asserts Belton should not apply in this case for the reason that Thomas got out of the car before Detective Maney could meet him.[3] Once Thomas was placed under custodial arrest outside of the vehicle, as was Roger

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[2] Chimel v. California, 395 U.S. 752 (1969)

[3] Respondent's assertion highlights the validity of the Supreme Court of North Dakota's concern that "police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search." State v. Wanzek, 598 N.W.2d 811, 815 (N.D. 1999).

Belton, the same concerns justifying the Belton search exist – the threat to officer safety and destructible evidence. Hence, the applicability of Belton should not be dependent on the reason Thomas exited his vehicle or whether first contact was initiated by the police. When Thomas arrived at a residence where drug-related arrests were being made, the warrant for his arrest already existed and did so regardless of where Thomas was situated at the time the warrant was discovered by the police. Yet, because the officer was unable to confront Thomas before he exited the vehicle, it is now contended by respondent that a search of the vehicle incident to a valid arrest is impermissible. The considerations supporting Belton's bright-line rule are squarely implicated when the police suddenly discover they are dealing with a person for whom an arrest warrant is outstanding; the dangerous and volatile situation arising when one is arrested exists whether or not the arrestee voluntarily exits a vehicle before initiation of contact with the police.

Respondent seems to suggest the need for some sort of nexus between the arrest and "evidence of the crime itself" (Brief of Respondent at p. 32) or a "connection between the arrest and the operation of the vehicle" (Brief of Respondent at p. 38). Relying upon this Court's opinion in Knowles v. Iowa, 525 U.S. 113 (1998), Respondent asserts that "it was improbable that there would be any evidence related to a violation of probation in the automobile." Brief of Respondent at p. 39.[4] There is no requirement that there be any sort of nexus in order to conduct a valid search incident to an arrest. For example, in United States v. Schecter, 717 F.2d 864, 868 (3rd Cir. 1983), the court disavowed the need to premise a Belton search on the existence of any nexus:

> The district court held incorrectly that the search was illegal because there was no nexus "between the item to be seized and criminal behavior." (footnote and citation omitted) This nexus, however, has never been required to justify an auto search incident to a lawful

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[4] As was asserted in petitioner's initial brief, reliance upon Knowles is misplaced where there was no arrest made in that case but rather the mere issuance of a traffic citation.

> arrest. Under New York v. Belton, supra, such a search is permissible whenever it is made in conjunction with and contemporaneous to a lawful arrest of the auto's occupants.

In a similar vein, both briefs supporting respondent seem to suggest that a search conducted under the factual circumstances occurring herein must not be "exploratory" (Brief of Respondent at p. 29) or "suspicionless" (Brief of NACDL at p. 24). These assertions appear to improperly equate a nexus requirement with the need for probable cause. The court in Schecter spurned this suggestion and determined that "a showing of probable cause is not required to justify the search of an auto's passenger compartment when the search is incident to a lawful arrest." Schecter, 717 F.2d at 868 n.5.

Both briefs supporting respondent exhibit an attempt to focus this case on the definition of "recent occupant." The instant case presents factors similar to Belton, i.e., arrest of a subject who had just exited a vehicle, *but for the arrestee voluntarily exiting a vehicle rather than at the direction of the police.* In the factual context of this case there can be no question but that Thomas was a "recent occupant," even under the most restrictive interpretation of that term, where he was seen exiting his vehicle by Detective Maney immediately before the contact between the two. This case does not present the temporal or spatial relationship questions which may arise under different facts. Here, Thomas was in approximately the same physical spot as was Roger Belton when he was arrested, and, as in Belton, the search in this case was plainly contemporaneous with the arrest of Thomas.[5] The same concerns for officer safety and preservation of evidence are present under the facts of both cases.

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[5] Indeed, neither respondent nor the NACDL argue that the search conducted herein was anything but contemporaneous with Thomas' arrest.

Both respondent to a lesser extent (see, e.g., Brief of Respondent at p. 20[6]), and the NACDL as the centerpiece of its argument, rely on the notion that a suspect must be subject to seizure while still in a vehicle in order to conduct a subsequent valid Belton search. The NACDL, in fact, proposes a new rule whereby Belton's bright-line rule should be restricted to cases where a suspect is seized or is subject to seizure while an occupant of a vehicle. Brief of NACDL at pp. 25-30. This proposal is apparently offered because the NACDL, while supporting the judgment of the Florida Supreme Court in Thomas v. State, 761 So. 2d 1010 (Fla. 1999), does not support the rationale of that court, hence the purported need for a new rule. There are various reasons why a new rule is not needed, the most significant being that Belton works just fine and is ingrained in routine police procedures. Rather than crafting a new rule[7], it is sufficient that Belton not be rendered inapplicable merely because the arrestee voluntarily and without provocation by the police exits a vehicle. Focusing on the instant case, under the NACDL's test Thomas would have been subject to having the vehicle searched had Detective Maney been more fleet of foot so as to have been able to ask Thomas for his licence while Thomas was still an "occupant." The same justification for the search exists regardless of the fact that Thomas had just stepped from his vehicle prior to initiation of contact by Detective Maney.

Lastly, respondent and the NACDL suggest that petitioner's and its *amicus*' citation of the relevant footnotes in Michigan v. Long, 463 U.S. 1032, 1035 n.1, 1049 n.14

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[6] "However, it is clear that Long, unlike the respondent, would have been *subject to seizure* for driving erratically and speeding while still in his car." (emphasis supplied)

[7] To the extent that the NACDL criticizes the State of Florida and the United States for failing to propose a new rule or test, suffice it to say that petitioner and the *amicus* supporting petitioner assert that the Belton bright-line rule is a workable rule which should apply regardless of the reason an arrestee exits a vehicle. A new rule is simply not needed where the Belton rule adequately supports the rationale for conducting a search of a vehicle incident to an arrest, namely officer safety and preservation of evidence.

(1983), is a declaration that "this Court has already decided the issue preserved in this case." Brief of NACDL at p. 22. We recognize that the footnotes are dicta but submit that the reasoning set forth in those footnotes has been adopted and followed by numerous courts as set forth in petitioner's initial brief. Those cases which permit a Belton search where the contact is initiated after the arrestee has voluntarily exited a vehicle are the better reasoned cases which promote the ability of the policeman in the field to better protect himself.

CONCLUSION

Based on the foregoing, and for the reasons set forth in the initial briefs supporting petitioner, the petitioner respectfully submits that the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

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